

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0476
Sales and Withholding Taxes-Responsible Officer
Various 1992 through 1995

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ISSUE(S)

I. **Responsible Officer Liability**– Duty to Remit Sales, Use, and Withholding Taxes

Authority: IC 6-2.5-9-3; IC 6-3-4-8; ***Indiana Department of Revenue v. Safayan*** (1995) 654 N.E.2nd 270.

Taxpayer protests the tax assessments.

STATEMENT OF FACTS

Taxpayer, his representatives, and the hearing officer conducted a telephone conference hearing on May 8, 2000. Taxpayer is listed as a responsible officer of RELI since November 20, 1989. On August 23, 1999 the department received a protest and copies of the notices the taxpayer had received. In letters dated November 16, 1999 and January 12, 2000, the department asked the taxpayer to provide proof that it was not the responsible officer of RELI and on March 15, 2000 the department scheduled a hearing for March 30, 2000 because no response was received. The taxpayer asked that the department reschedule the hearing. A hearing was rescheduled for April 26, 2000 and again on May 8, 2000.

RELI filed late and "no remit" sales and withholding tax returns including several returned checks that reached warrant stages. RELI's account indicates it is in bankruptcy. The Indiana Department of Revenue timely assessed the corporation for withholding and sales taxes unpaid to the state for various tax periods. The corporation did not remit these taxes and the Indiana Department of Revenue assessed the liabilities against the taxpayer as a responsible officer of the corporation. Taxpayer protested the assessments. Taxpayer is an officer of the corporation since November 20, 1989. More facts will be provided as necessary.

I. **Responsible Officer Liability** – Duty to Remit Sales and Withholding Taxes

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8 (f), which provides that

“In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Pursuant to *Indiana Department of Revenue v. Safayan* (1995) 654 N.E.2nd 279, page 273: “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Taxpayer did not provide additional information regarding its liabilities nor has he made a statement that he is not the responsible officer. Taxpayer was advised that the four BIA liabilities could be reduced if the actual liability was less than the BIA billings and more if the actual was higher than the BIA's.

Taxpayer's representative states that the taxpayer was not aware of its responsibilities because the bookkeeper maintained all of the company's records. The employment of a bookkeeper does not relieve the taxpayer of its responsibility to remit sales and withholding taxes. Taxpayer was also informed that the majority of the assessment was for the failure to remit tax with the tax returns and returned checks that had reached the warrant stage incurring additional costs.

Taxpayer has not provided proof that he was not a responsible officer nor has the taxpayer negated the assessments. Taxpayer was advised that a payment plan could be implemented.

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FINDING

Taxpayer's protest is denied.

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